

*Gregg W. Zive*

Honorable Gregg W. Zive  
United States Bankruptcy Judge



Entered on Docket  
March 02, 2012

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Attorneys for Plaintiffs

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

IN RE:  
CETUS MORTGAGE, LTD.,  
Debtor.

Case No. NV-08-51131-GWZ

Chapter 7

Adv. No. 10-05090

**ORDER APPROVING  
COMPROMISE AND SETTLEMENT  
OF DISPUTED CLAIM**

**Hearing Date: February 22, 2012**  
**Hearing Time: 2:00 p.m.**

CYNTHIA MORREY; RICHARD W. EICHHORN; MICHAEL RHOADS, as General Partner for SPRINGVILLE INVESTORS II GP and as General Partner for COUNTRY RHOADS ASSOCIATES LP; PAUL S. FEARS; STACEY NOLL FEARS; DEAN S. HAGEN as Trustee for HAGEN LIVING TRUST; IRENE J. HAGEN as Trustee for HAGEN LIVING TRUST; ELMER R. VACCHINA as Trustee for ELMER R. VACCHINA TRUST; WILLIAM H. WRIGHT as Trustee for WRIGHT FAMILY TRUST; ROSALIE M. WRIGHT as Trustee for WRIGHT FAMILY TRUST; STEVEN A. TUTTLE; NANCY R. TUTTLE; OPAL A. SMITH as Trustee of the survivor's trust under the LEONARD W. AND OPAL A. SMITH FAMILY TRUST; GEORGE M. DIXON; JANIS A. DIXON; ELSEY D. HARDEN as Trustee of HARDEN 1992 FAMILY TRUST; MARIE JEANNE HARDEN as Trustee of HARDEN 1992 FAMILY TRUST; MICHAEL

1 BENNING; LORI BENNING; BARBARA  
2 D. BEAL as Trustee for BARBARA D.  
3 BEAL LIVING TRUST; HELEN L. NOLTE  
as Trustee for HELEN L. NOLTE LIVING  
4 TRUST; CARY P. YOUNG; ERIN M.  
YOUNG; PHILIP L. GREEN; DONNA M.  
GREEN; RAY P. HOGLAND as Trustee for  
2002 HOGLAND TRUST; WILLIAM H.  
5 JEPHSON as Trustee for JEPHSON  
FAMILY TRUST; ELEANOR J. JEPHSON  
as Trustee for JEPHSON FAMILY TRUST;  
RANDALL R. RUCH as Trustee for  
6 SCHUYKILL VALLEY SPORTING  
GOODS, INC. PROFIT SHARING PLAN;  
7 GERALD WILLIAMS as Trustee for  
SCHUYKILL VALLEY SPORTING  
8 GOODS, INC. PROFIT SHARING PLAN;  
9 JAY SCHAEFFER, VICTOR ALAN  
10 PERRY as Trustee for VICTOR ALAN  
PERRY, LLC DEFINED BENEFIT  
11 PENSION PLAN; and SHARLENE JONES  
as executor for IRENE S. K. CHUN  
12 (deceased).

13 Plaintiffs,

14 vs.

15 RONALD E. OSBORN; BRENT P.  
OSBORN; OSBORN DEVELOPMENT,  
16 CO., LLC, a Nevada limited liability  
company, RV & YACHT I, LLC, a Nevada  
limited liability company; BILL BOOTH;  
LAVONE BOOTH; GENE E.  
17 MCCLELLAND as Trustee for  
MCCLELLAND LIVING TRUST;  
PATRICIA L. MCCLELLAND as Trustee  
18 for MCCLELLAND LIVING TRUST;  
GEORGE C. SCHUMACHER; TERRY  
19 ANNE SCHUMACHER; DUANE E.  
FLESHMAN; JOHNNIE M. FLESHMAN;  
STACY L. DOUTRE as custodian for  
20 DERREK M. DOUTRE; RAJEN N.  
BHATT; GIENO V. MOTL; JOANNE  
TOMASIEWICZ; PEGGY LAKEY;  
21 RODGER LAKEY; WILLIAM T. HIGGS;  
JUDY E. HIGGS; KELVIN R. LAIRD;  
ROBERT J. FRICKE as Successor Trustee of  
22 the FRICKE 2001 FAMILY TRUST;  
DARLENE LUSTER; DEBRA LYNN  
23 HORTON; HAZEL M. SIMMONS;  
MARJORIE M. JONES; CHARLES E.  
24 SLAVIN as Trustee for SLAVIN FAMILY  
REVOCABLE TRUST; PATRICIA E.  
25 SLAVIN as Trustee for SLAVIN FAMILY

1 REVOCABLE TRUST; PETER ALBERT  
 2 JEPHSON; ETHEL G. JEPHSON;  
 3 CHARLES G. GELTZ, JR.; LOA JEAN  
 4 GELTZ; STEPHEN F. GIES; SHARON  
 5 GIES; RICHARD P. ASH as Trustee for  
 6 RICHARD P. AND MARY L. ASH 1990  
 7 FAMILY TRUST; MARY L. ASH as  
 8 Trustee for RICHARD P. AND MARY L.  
 9 ASH 1990 FAMILY TRUST; GEORGE M.  
 10 DIXON as Trustee for DIXON ELECTRIC  
 11 PENSION PLAN TRUST; JENNIFER  
 12 HICKOK; VERONICA DORRIE as Trustee  
 13 for VERONICIA DORRIE TRUST;  
 14 JEANNE W. KEITH; RAY K. KEITH;  
 15 HENRY L. CLARK as Trustee for HENRY  
 16 L. CLARK AND ROBERTA L. CLARK  
 17 1993 FAMILY TURST; ROBERTA L.  
 18 CLARK as Trustee for HENRY L. CLARK  
 19 AND ROBERTA L. CLARK 1993 FAMILY  
 20 TURST; JENNIFER R. HICKOK; C/F  
 21 JAMISON LEIGH LUNDEMO; CAROL E.  
 22 PORTA as Trustee for CAROL R. PORTA  
 23 REVOCABLE TRUST; GAYLE  
 24 ROBINSON; MICHAEL JOHN  
 25 PONTRELLI as Trustee for PONTRELLI  
 26 FAMILY TRUST; NORMA JEAN  
 27 PONTRELLI as Trustee for PONTRELLI  
 28 FAMILY TRUST; JONATHAN EDWARD  
 ARNOW as Trustee for TESSA ARNOW  
 TRUST; CLYDE R. BROWN as Trustee for  
 BROWN FAMILY TRUST; SHARAN L.  
 BROWN as Trustee for BROWN FAMILY  
 TRUST; CYNTHIA G. DAVIS as Trustee  
 for SECONDED AMENDED CYNTHIA G.  
 DAVIS LIVING TRUST DATED JULY 1,  
 2004; TRACE W. GEIL; MARY A.  
 GIANNOTTI as Trustee for GIANNOTTI  
 FAMILY BYPASS TRUST CREATED  
 UNDER THE GIANNOTTI 1990  
 REVOCABLE TRUST DATED OCTOBER  
 23, 1990; BEVERLY WALLACE; LOIS G.  
 ROBINSON; JOHN R. LINDELL as Trustee  
 for LINDELL'S PAINTING SERVICE  
 MONEY PURCHASE PENSION PLAN  
 AGREEMENT; BARBARA A. LINDELL as  
 Trustee for LINDELL'S PAINTING  
 SERVICE MONEY PURCHASE PENSION  
 PLAN AGREEMENT; SHERRI KEY as  
 Trustee for LINDELL'S PAINTING  
 SERVICE MONEY PURCHASE PENSION  
 PLAN AGREEMENT; ANGELIQUE

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1 CLARK as Trustee for CETUS  
 2 MORTGAGE; and STOREY COUNTY,  
 2 NEVADA,

3 Defendants.

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 5 The matter came before the Court on the Motion For Order Approving Settlement Of  
 6 Disputed Claim (“Motion”) filed by Plaintiffs. Jeffrey Hartman appeared on behalf of the  
 7 Plaintiffs; Douglas Gerrard appeared on behalf of the following Defendants: Gene E.  
 8 McClelland as Trustee for McClelland Living Trust; Patricia L. McClelland as Trustee for  
 9 McClelland Living Trust; Duane E. Fleshman; Johnnie M. Fleshman; Stacy L. Doutre as  
 10 custodian for Derek M. Doutre; Rajen N. Bhatt; Gino V. Motl; Joanne Tomasiewicz; Peggy  
 11 Lakey; Rodger Lakey; Kelvin R. Laird; Stephen F. Gies; Sharon Gies; Richard P. Ash as  
 12 Trustee for Richard P. and Mary L. Ash 1990 Family Trust; George M. Dixon as Trustee for  
 13 Dixon Electric Pension Plan Trust; Veronica Dorrie as Trustee for Veronica Dorrie Trust;  
 14 Jeanne W. Keith; Ray K. Keith; Jennifer R. Hickok; Marjorie Jones; Charles E. Slavin as  
 15 Trustee for Slavin Family Revocable Trust; Patricia E. Slavin as Trustee for Slavin Family  
 16 Revocable Trust; Michael John Pontrelli as Trustee for Pontrelli Family Trust; Norma Jean  
 17 Pontrelli as Trustee for Pontrelli Family Trust; Cynthia G. Davis as Trustee for Second  
 18 Amended Cynthia G. Davis Living Trust Dated July 1, 2004; Mary A. Giannotti as Trustee  
 19 for Giannotti Family Bypass Trust created under the Giannotti 1990 Revocable Trust dated  
 20 October 23, 1990; John R. Lindell as Trustee for Lindell’s Painting Service Money Purchase  
 21 Pension Plan Agreement; Sherri Key as Trustee for Lindell’s Painting Service Money  
 22 Purchase Pension Plan Agreement; Beverly Wallace; Quarles G. Geltz, Jr.; Loa Jean Geltz;  
 23 and Darlene Luster (“Settling Defendants”).

24 There were no objections to the Motion filed with the Court. As requested by  
 25 Plaintiffs in the Motion, the Court takes judicial notice of the papers and pleadings on file in  
 26 this proceeding as well as in the Cetus bankruptcy case and other adversary proceedings  
 27 related to Cetus which are pending in this Court. The Court is well familiar with the myriad  
 28 factual and legal issues surrounding the manner in which Cetus administered the various

1 loans it brokered, including those loans which are the subject of the underlying complaint in  
 2 this adversary proceeding. Having taken judicial notice as requested by the Plaintiffs, the  
 3 Court finds and concludes that:

4       1. Notice of hearing on the Motion was proper and given in accordance with the  
 5 applicable notice rules.

6       2. The criteria for determining whether a settlement agreement should be approved  
 7 by the Court, as set forth in *In re A & C Properties*, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986,  
 8 *cert. denied sub nom. Martin v. Robinson*, 479 U.S. 854 (1986) have been satisfied. Given  
 9 the factual and legal questions of agency and other defenses as well as the likely  
 10 unavailability of Marcilyn Benvin as a fact witness, it is difficult to ascertain the likelihood  
 11 of success on the merits of the litigation. Moreover, due to the large number of Plaintiffs  
 12 and Defendants, and based upon the expense of proceeding to trial and through possible  
 13 appeals thereafter, as well as the significant delay in achieving finality, the Court concurs  
 14 that approval of the settlement is in the best interest of the parties.

15       3. The Court is satisfied that the *A & C Properties* criteria have been met. Good  
 16 cause appearing,

17           **IT IS ORDERED** that the Motion For Order Approving Settlement Of Disputed  
 18 Claim be, and the same hereby is, granted. The form of Settlement Agreement included in  
 19 **DE 96** shall be executed by the party representatives, as necessary, and

20           **IT IS FINALLY ORDERED** that, should it be necessary to do so, in accordance  
 21 with F.R.Civ.P. 70, made applicable to this proceeding by F.R.Bankr.P. 7070, the Clerk of  
 22 the Court is authorized to execute a request for reconveyance of the deed of trust recorded  
 23 May 31, 2007 in the official records of Storey County, Nevada as document 106796, as well

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1 as any other document which may be necessary and appropriate in completing the terms of  
2 the Settlement.

3 Submitted by:

4 **HARTMAN & HARTMAN**

5  
6 /S/ Jeffrey L. Hartman  
7 Jeffrey L. Hartman, Esq.  
Attorney for Plaintiffs

8 **GERRARD COX & LARSEN**

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10 /S/ Douglas Gerrard  
11 Douglas E. Gerrard, Esq. for  
Settling Defendants

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